No. 80-5303

IN THE

Supreme Court of the United

October Term, 1980

ANIA BELTRAN, individually and on behalf of all others similarly situated,

Petitioner,

-against-

BEVERLEE A. MYERS, individually and as Director, California State Department of Health; and ELISABETH LYMAN, individually and as Deputy Director, California State Department of Health,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE ATTORNEYS GENERAL OF THE STATE OF NEW YORK AND THE STATE OF MARYLAND, *AMICI CURIAE*, IN SUPPORT OF THE JUDGMENT APPEALED FROM

ROBERT ABRAMS
Attorney General of the
State of New York
The Capitol
Albany, New York 12224
Telephone (518) 474-2956

STEPHEN H. SACHS
Attorney General of the
State of Maryland
One South Calvert Street
Baltimore, Maryland 21202
Telephone (301) 383-2615

Amici Curiae

SHIRLEY ADELSON SIEGEL
Solicitor General
State of New York

CLIFFORD A. ROYAEL
Principal Attorney,
State of New York

Of Counsel

PRINTED BY NATIONAL LEGAL SUPPLY, INC.

TABLE OF CONTENTS

	PAGE
Interest of the State of New York	1
ARGUMENT — The Court below correctly held that the imposition by California of its transfer-of-assets prohibition on medically needy aged, blind and disabled applicants for and recipients of medical assistance did not conflict with the requirements of Title XIX	3
Conclusion	8

TABLE OF AUTHORITIES

CASES:	PAGE
Blum v Caldwell, et al., (petition filed June 24, 1980, Docket No. 79-2034)	2
Caldwell v Blum, 621 F2d 491 (2d Cir, 1980)	3
Dawson v Myers, 622 F2d 1304 (9th Cir, 1980)	2, 5, 6
Drogolewicz v Quern, 74 Ill App 3d 862 (1979), 393 NE2d 1212	3
Fabula V Buck, 598 F2d 869 (4th Cir, 1979)	3
Lerner v Division of Family Services, 70 Wis 2d 670 (1975), 235 NW2d 478	3, 5
New York State Dept. of Social Services v Dublino, 413 US 405 (1973)	3, 5
Red Lion Broadcasting Co. v F.C.C., 395 US 367 (1969)	5
Shea v Vialpando, 416 US 251 (1974)	5
Wheeler v Barbera, 417 US 402 (1974), mod 422 US 1004 (1975)	6
Zuniga v Amfac Foods, Inc., 580 F2d 380 (10th Cir, 1978)	6

Federal Statutes

Public Law 93-233, § 13	4
Public Law 96-611	2
42 USC § 1381, et seq.	2, 3
42 USC § 1382 (b)	6
42 USC § 1382e	6

TABLE OF AUTHORITIES (cont'd)

Federal Statutes (cont'd)	PAGE
42 USC § 1382f	6
42 USC § 1396	2, 3
42 USC § 1396a (a) (10)	4
42 USC § 1396a (a) (10) (C)	2, 3
42 USC § 1396a (a) (10) (C) (i)	5
42 USC § 1396a (a) (17)	2, 3, 7
Miscellaneous	
Cong. Record - Senate, Dec. 21, 1973, p 43100	4
Cong. Record - Senate, Dec. 21, 1973, p 43113	4, 5
S. Rep. No. 404, 89th Cong., 1st Sess. (1965), US Code Cong. & Admin. News, 1965, p 2019	4, 7
S. Rep. No. 471, 96th Cong., 1st Sess. 48-49 (1979)	3

No. 80-5303

IN THE

Supreme Court of the United States

October Term, 1980

ANTONIA BELTRAN, individually and on behalf of all others similarly situated,

Petitioner,

-against-

BEVERLEE A. MYERS, individually and as Director, California State Department of Health; and ELISABETH LYMAN, individually and as Deputy Director, California State Department of Health,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE ATTORNEYS GENERAL OF THE STATE OF NEW YORK AND THE STATE OF MARYLAND, *AMICI CURIAE*, IN SUPPORT OF THE JUDGMENT APPEALED FROM

Interest of the State of New York

New York supports the right of a state participating in the Medical Assistance Program authorized under Title XIX of the Social Security Act (42 USC § 1396, *et seq.*) to impose a transfer-of-assets prohibition which has the effect of requiring persons to apply their own assets to their medical expenses rather than giving them away to relatives and friends for the purpose of qualifying themselves for medical care and services at public expense. It is

axiomatic that a state has only finite resources available for the care and support of its indigent citizens. In the absence of an expression of congressional intent to the contrary, and consistent with the purpose of the Medical Assistance Program to enable each state "* * * as far as practicable under the conditions in such State, to furnish * * * medical assistance on behalf of * * * individuals, whose income and resources are insufficient to meet the costs of necessary medical services * * *" (42 USC § 1396), we argue for the proposition that each state has had since the inception of the program the right to conserve its limited resources by restricting medical assistance to those who are truly needy, and denying it to those who have created their own need by giving their assets away for the purpose of qualifying. This existing right was recognized by Congress in December, 1980 when it passed H.R. 8406 which was signed into law by the President on December 28, 1980 (designated as Public Law 96-611). It specifically authorizes states to impose broad transfer-of-assets prohibitions in the Medical Assistance Program.* We believe that the Court below correctly held that California's transfer-of-assets prohibition as applied before the change in Federal law did not conflict with the provisions of 42 USC § 1396a (a) (10) (C) and 1396a (a) (17) (*Dawson v Myers*, 622 F2d 1304 [9th Cir, 1980]).**

---

*P.L. 96-611 also imposes a transfer-of-assets prohibition in the Federal Supplemental Security Income (SSI) program (42 USC § 1381, *et seq.*).

**Although New York is no longer an "SSI" state like California, and has become a "209(b)" state (see petitioner's brief, p 33), we believe the decision of the Court below is of significant importance for all states participating in the Title XIX program. New York still has pending before this Court a petition for certiorari in the matter of *Blum v Caldwell, et al.*, (petition filed June 24, 1980, Docket No. 79-2034) which raises an issue similar to that presented in the case at bar.

ARGUMENT

The Court below correctly held that the imposition by California of its transfer-of-assets prohibition on medically needy aged, blind and disabled applicants for and recipients of medical assistance did not conflict with the requirements of Title XIX.

A.

State transfer-of-assets prohibitions in the Medical Assistance Program establish complementary eligibility standards which are consistent with the purpose of the Title XIX Medical Assistance Program (42 USC § 1396). This Court has held that state collateral eligibility standards in public assistance programs should not be voided by the Courts unless there is a clear manifestation of congressional intent that such requirements may not be imposed (*New York State Dept. of Social Services v Dublino*, 413 US 405, 413 [1973]).

Title XIX contains no provision which precludes state transfer-of-assets prohibitions. Apparently such prohibitions were not seriously questioned until after the Federal Supplemental Security Income (SSI) Program (42 USC, § 1381, *et seq.*) became effective in 1974, when the comparability issue under 42 USC, § 1396a (a) (10) (C) and § 1396a (a) (17) was raised in cases such as the one at bar (see for example, *Fabula v Buck*, 598 F2d 869 [4th Cir, 1979]; *Caldwell v Blum*, 621 F2d 491 [2d Cir, 1980]; also, Senate Report No. 471, 96th Congress, 1st Sess. pp 48-49 [1979]; *Lerner v Division of Family Services*, 70 Wis 2d 670 [1975], 235 NW2d 478; *Drogolewicz v Quern*, 74 Ill App 3d 862 [1979], 393 NE2d 1212). However, comparability does not require identical treatment between the "medically needy" and the "categorically needy" (see Subpoint "B" *infra*), and there is no clear manifestation of Congressional intent that Congress intended to prohibit transfer-of-assets prohibitions by enacting comparability requirements (*Caldwell v Blum, supra*, 621 F2d at 495).

Congress apparently intended in 1965 that the purpose of comparability under the medical assistance program (42 USC, § 1396a [a] [10]) was to:

> "make more specific a provision now in the law that in determining eligibility for and the extent of aid under the plan, States must use reasonable standards consistent with the objectives of the titles. Although States may set a limitation on income and resources which individuals may hold and be eligible for aid, they must do so by maintaining a comparability among the various categorical groups of needy people. Whatever level of financial eligibility the State determines to be that which is applicable for the eligibility of the needy aged, for example, shall be comparable to that which the State sets to determine the eligibility for the needy blind and disabled; and must also have a comparability to the standards used to determine the eligibility of those who are to receive medical assistance as needy children and the parents or other relatives caring for them." S. Rep. No. 404, 89th Cong., 1st Sess. 77-78 (1965); see H. Rep. No. 213, 89th Cong., 1st Sess. 67 (1965).

When in 1973 Title XIX was amended to extend medical assistance coverage to SSI recipients, and optional coverage to categorically-related persons, only technical amendments were made to the comparability provision contained in 42 USC § 1396a (a) (10) with respect to extending coverage to "all individuals who would, except for income and resources, be eligible * * * to have paid with respect to them supplemental security income benefits * * *" (P.L. 93-233, § 13). This amendment was then described as treating the matter of Medicaid eligibility for SSI recipients (Cong. Record - Senate, Dec. 21, 1973, p 43100), and was characterized by Senator Mondale as having the purpose of preserving "* * * medicaid eligibility for the aged, blind and disabled" (Cong. Record

- Senate, Dec. 21, 1973, p 43113). This is inconclusive on the issue at bar.

Thus Congress had not manifested any intention to prevent states from enacting transfer-of-assets prohibitions either when the Medical Assistance Program was first enacted into law, or when its provisions were later amended with respect to the SSI program.* Accordingly, we urge that state transfer-of-assets prohibitions applicable only to the "medically needy" did not conflict with Title XIX in the absence of a clear expression of congressional intent that they were impermissible (cf. *Lerner v Division of Family Services, supra*, 393 NE2d at 484-485).

B.

The interpretation of the Department of Health and Human Services that the comparability provisions of Title XIX prevented "SSI" states from imposing transfer-of-assets prohibitions on the "medically needy" because they could not be imposed on the "categorically needy" is lacking in rationality, and unauthorized by Title XIX (see subpoint "A", *supra*). Therefore, the Court below properly refused to defer to the agency's interpretation (*Red Lion Broadcasting Co. v F.C.C.*, 395 US 367, 381 [1969]; *Shea v Vialpando*, 416 US 251, 262, n. 11 [1974]; *New York State Department of Social Services v Dublino, supra*).

As held by the Court below, the comparability provision of 42 USC § 1396a (a) (10) (C) (i), which pertains to income and resources, does not require that "indentical" standards must be

---

*The Court below properly rejected subsequent legislative history, which apparently relied upon erroneous interpretations of Federal law by the Department of Health and Human Services (HHS) (previously the Department of Health, Education and Welfare) (*Dawson v Myers, supra*, 622 F2d at 1311).

applied to the "categorically needy" and the "medically needy", since:

> "[c]omparable only means that there must be enough similar characteristics or qualities to make comparison appropriate. Webster's Third New International Dictionary, G. & C. Merriam Co. (1976). The other standards which are used for determining financial eligibility are similar enough to invite comparison. We therefore cannot say that the standards used by California to determine eligibility into the *medically needy* group (including the transfer rule) are not comparable to those which are used under the SSI program". (*Dawson v Myers, supra*, 622 F2d at 1311)

This court has also held that "'[c]omparable' * * * does not mean 'identical' * * *" (*Wheeler v Barbera*, 417 US 402, 420 [1974], mod 422 US 1004 [1975]). Comparability can exist when there are "some differences" between the subjects being compared (*Zuniga v Amfac Foods, Inc.*, 580 F2d 380, 386 [10th Cir, 1978]).

A tranfer-of-assets prohibition does not have the same significance for the SSI program as it does for the medical assistance program. There is no logical correlation between the transfer of property for the purpose of qualifying for SSI, and the transfer of property for the purpose of qualifying for medical assistance. It is unlikely that an applicant for SSI would transfer vast assets to qualify for a small fixed Federal monthly income benefit (42 USC §§ 1382 [b], 1382f), as supplemented by the State in which he resides (42 USC § 1382e). Comparable considerations, however, do not apply to applicants for medical assistance since these benefits are unlimited. For instance, a person who is entering a nursing home to spend the remainder of his or her life, where the cost of care and treatment is many thousands of dollars every year, has a tremendous incentive to transfer considerable assets to family or friends rather than use them to pay the cost of medical care. Thus,

the HHS interpretation that comparability requires indentical treatment in this respect between the "medically needy" and "categorically needy" is irrational.

Moreover, the HHS interpretation irrationally defeats the purpose of the spend down provision contained in Title XIX (42 USC § 1396a [a] [17]). Under such provision an applicant for or recipient of medical assistance is required to apply his excess income toward the cost of his own medical costs (S. Rep. No. 404, 89th Cong., 1st Sess. [1965], US Code Cong. & Admin. News, 1965, p 2019). By interpreting the comparability provisions to require identical treatment between SSI "medically needy" and "categorically needy", applicants for and recipients of medical assistance are left free to give their property away rather than spend down as intended by Congress.

Admittedly, HHS has achieved programmatic symmetry by requiring identical treatment between the SSI "medically needy" and "categorically needy". However, such interpretation does not rationally further the purposes of the medical assistance program, and it is unauthorized by Title XIX. The Court below properly rejected it, and upheld the California transfer-of-assets prohibition.

CONCLUSION

The Judgment of the Court of Appeals should be affirmed.

Dated: Albany, New York
January 16, 1981

Respectfully submitted,

ROBERT ABRAMS
Attorney General of the
State of New York

STEPHEN H. SACHS
Attorney General of the
State of Maryland

Amici Curiae

SHIRLEY ADELSON SIEGEL
Solicitor General,
State of New York

CLIFFORD A. ROYAEL
Principal Attorney,
State of New York

Of Counsel